

CHAPTER 11
ATTORNEY FEE CONTRACTS

493—11.1(13B) Scope. This chapter sets forth the rules for private attorneys entering into contracts for indigent defense legal services with the state public defender. See 493—Chapter 7 for definitions of terms used in this chapter.

493—11.2(13B) Contracts. An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons.

11.2(1) To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa.

11.2(2) A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the Web at www.spd.state.ia.us.

493—11.3(13B) Notice of proposed contract. The state public defender will give notice to attorneys of the availability of contracts for indigent defense legal services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

493—11.4(13B) Contract approval or rejection.

11.4(1) The state public defender may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, and ability to provide services to eligible individuals. The information received may be taken into consideration in determining whether to enter into a contract with the potential contracting attorney.

11.4(2) The state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to determine the attorney's qualifications and ability to perform the conditions of the contract.

11.4(3) The state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to establish the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

11.4(4) The state public defender may decline to award a contract to a proposed contracting attorney if the state public defender receives information from credible sources that the attorney is not competent, effective, or trustworthy, or is not appropriate to provide the services for some other pertinent reason. The state public defender shall give written notice of this action to the attorney. The attorney may seek reconsideration of this decision in the manner prescribed in rule 11.7(13B).

11.4(5) Nothing contained in this rule shall obligate the state public defender to enter into any contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

493—11.5(13B) Contract elements.

11.5(1) A contract with a private attorney may be awarded for the provision of trial or appellate legal services to indigents in cases as determined by the state public defender.

11.5(2) A contract can only be in force and effect when signed by the contracting attorney and approved by the state public defender.

11.5(3) The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

11.5(4) Once a contract has been awarded, the state public defender shall notify the clerks of court of the counties in which the contracting attorney has agreed to provide services.

11.5(5) A contract with a private attorney should cover, but not be limited to, the following subjects:

- a. The categories of cases in which the attorney is to provide services;
- b. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;
- c. Identification of the attorney(s) who will perform legal representation under the contract;
- d. A prohibition against assignment of the obligations undertaken pursuant to the contract, including a prohibition against substitution of counsel without prior consent of the state public defender or the court;
- e. The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;
- f. A description of the compensation to be paid and the manner of payment;
- g. A description of any expenses, such as support services, investigative services and expert witness expenses, which may be provided under the contract;
- h. A description of the record-keeping and reporting requirements under the contract;
- i. A description of the manner in which the contract may be terminated;
- j. A description of the manner of disposition of ongoing obligations following termination.

11.5(6) Compensation. The attorney shall be compensated as set forth in rule 493—12.4(13B, 815) for trial work and rule 493—12.5(13B, 815) for appellate work.

493—11.6(13B) Contract renewal. Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled. If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the contract and returning it to the state public defender within 30 days of the date on which the contract is submitted to the contracting attorney. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may seek reconsideration of this decision in the manner prescribed in rule 11.7(13B).

493—11.7(13B) Reconsideration. A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten days of receipt of notice of the action. The request for reconsideration shall state the grounds upon which the attorney challenges the action and contain any additional facts or circumstances the attorney wants the state public defender to consider. The state public defender shall then hold a hearing and may uphold, reverse or modify the prior decision. The decision following this reconsideration shall be made in writing and shall set forth all of the findings relied upon in making the decision. If an attorney remains aggrieved by the decision after the reconsideration, the attorney may seek judicial review of the decision.

These rules are intended to implement Iowa Code chapter 13B.

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